IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 6573 of 2007(G)

PETITIONER:

JACOB CHACKO, S/O.A.V.CHACKO,
AGED 53 YEARS, DY.S.P.(M.T),
CENTRAL ZONE,ERNAKULAM.

BY ADV. SRI.C.A.CHACKO,
SRI.N.A.SHAFEEK,
SMT.C.M.CHARISMA.

RESPONDENTS:
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1. **THE STATE OF KERALA,**
   REP. BY SECRETARY, HOME DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DIRECTOR GENERAL OF POLICE,**
   POLICE HEAD QUARTERS,
   THIRUVANANTHAPURAM.

3. **INSPECTOR GENERAL OF POLICE,**
   ARMED POLICE BATTALION,
   THIRUVANANTHAPURAM.

4. **THE COMMANDANT,**
   MALABAR SPECIAL POLICE(MSP),
   MALAPPURAM.

BY SR. GOVERNMENT PLEADER SRI. NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.6573/2007-G:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER DTD. 21/07/99 ISSUED BY R.3. ORDERING DISCIPLINARY ACTION AGAINST THE PETITIONER.

EXT.P.2: COPY OF THE CHARGE MEMO DTD. 22/11/99 ISSUED BY THE DEPUTY COMMANDANT, MSP.

EXT.P.3: COPY OF THE OBJECTION DTD. 30/05/02 SUBMITTED BY THE PETITIONER.

EXT.P.4: COPY OF THE DEFENCE STATEMENT DTD. 19/08/2002 SUBMITTED BY THE PETITIONER.

EXT.P.5: COPY OF THE SHOW CAUSE NOTICE DTD. 31/11/02 ISSUED BY THE R.3.

EXT.P.6: COPY OF THE REPLY STATEMENT DTD. 21/01/03 SUBMITTED BY THE PETITIONER.

EXT.P.7: COPY OF THE ORDER DTD. 05/04/03 OF R.3.

EXT.P.8: COPY OF THE APPEAL DTD. 27/10/03 SUBMITTED BEFORE R.2.

EXT.P.9: COPY OF THE ORDER DTD. 10/06/05 OF R.2.

EXT.P.10: COPY OF THE REVIEW PETITION DTD. 04/10/05.

EXT.P.11: COPY OF THE ORDER DTD. 01/09/06 OF R.1.

EXT.P.12: COPY OF THE JUDGMENT DTD. 19/10/06 IN O.P. NO. 10940/03 OF THIS COURT.

EXT.P.13: COPY OF THE ORDER DTD. 25/06/04 ISSUED BY THE GOVERNMENT.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

V.GIRI, J.

W.P.(C).No.6573 of 2007 K

Dated this the 7th day of November, 2007.

JUDGMENT

The petitioner, while working as a Deputy Superintendent of Police (Motor Transport) at Central Zone, Ernakulam, was issued with Ext.P2 memo of charges, to which, he submitted Ext.P4 objection.

2. Pursuant to a complaint made by the petitioner against the appointment of the Enquiry Officer, another Deputy Commandant Mr.A.Kunjukunju was appointed as the Enquiry Officer and an oral enquiry was conducted by him. Be that as it may, it seems that the Enquiry Officer found that the charges levelled against the petitioner has not been proved. Though a copy of the enquiry report has not been produced, this fact is referred to in Ext.P5 show cause notice issued by the 3rd respondent, which says that the Disciplinary Authority proposed to impose a penalty of barring of 3 years increment with cumulative effect. Petitioner submitted objections to Ext.P5 as per Ext.P6. But the proposal was confirmed with the modification that the punishment imposed was barring of 2 increments with

cumulative effect. On further appeal before the Government, by Ext.P9 order, the punishment was modified to barring of two increments without cumulative effect and this was confirmed in the revision filed by him.

3. Though several contentions have been urged in the writ petition challenging the orders impugned, I am of the view that the matter requires reconsideration by the original authority. As stated above, the Inquiring Authority, apparently, found that the petitioner is not guilty of the charges and this is reflected in Ext.P5. No doubt, the Disciplinary authority was entitled to disagree with the findings of the Enquiry Officer and then propose to impose a suitable punishment finding that the delinquent officer is guilty. But when the disciplinary authority proposes to do so, he can arrive at a conclusion as regards the guilt of the delinquent officer only after giving notice of his tentative conclusions and also after referring to the materials on the basis of which he proposes to disagree with the Enquiry Officer.

4. On a perusal of Ext.P5, I find that the disciplinary authority has found the guilt of the accused

disagreeing with the Enquiry Officer prior to hearing the petitioner in this regard. In my view, this lapse on the part of the disciplinary authority affects the validity of the punishment imposed on the petitioner.

5. For this short reason, I find that the matter will have to be reconsidered by the disciplinary authority.

In the result, the writ petition is allowed in part. Exts.P5, P7, P9 and P11 are set aside. The 3rd respondent is directed to proceed from the stage of receipt of the report of the Enquiry Officer, in accordance with law, and issue a fresh notice, hear the petitioner and pass appropriate orders, finalizing the proceedings initiated as per Ext.P2 within six months from the date of receipt of a copy of this judgment.

Sd/-

(V.GIRI)

JUDGE

sk/

//true copy//

P.S. To Judge